

FILED

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

JOHN A.W. BRATCHER
CLERK AND MASTER

BRIAN D. WILCOX and
RAYLENE WILCOX,

Plaintiffs,

v.

Case No.:

09-1320CV

THE TRAVELERS INDEMNITY
COMPANY OF AMERICA,

JURY DEMAND

Defendant,

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Brian D. Wilcox and Raylene Wilcox, sue Defendant, The Travelers Indemnity Company of America, and allege as follows:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of Twenty-Five Thousand Dollars (\$25,000) exclusive of interest, costs and attorneys' fees.
2. Plaintiffs, Brian D. Wilcox and Raylene Wilcox, are husband and wife, and are residents of 107 Yocum Drive, Smyrna, Rutherford County, Tennessee 37167.
3. Defendant, The Travelers Indemnity Company of America, is a foreign insurance company authorized to engage in, and does engage in, the sale and delivery of property insurance within the State of Tennessee.

4. Plaintiffs' claim for relief arises from a covered sinkhole loss to their property located at 107 Yocum Drive Drive, Smyrna, Rutherford County, Tennessee 37167 (hereinafter the "Property"). Venue is proper pursuant to Tenn. Code Ann. § 20-4-103.

5. At all times material hereto, Plaintiffs have been the owners of the Property.

6. Plaintiffs renewed or procured a policy of homeowners insurance (hereinafter the "Policy"), from Defendant covering the above-referenced Property. A copy of the Policy is not attached but is in the possession of Defendant and is being requested.

7. In consideration of monies paid by Plaintiffs to Defendant, the Policy was issued, insuring the Plaintiffs' Property against risks, including sinkhole collapse.

8. Plaintiffs have renewed said Policy each and every year and have paid all premiums due thereunder and otherwise met all conditions of coverage thereunder.

9. On or about August 8, 2008, while the Policy was in full force and effect, the Property was damaged as a result of sinkhole collapse.

10. The damage to Plaintiffs' Property is caused by a covered peril under the Policy.

11. A notice of loss and damage was properly given by Plaintiffs to Defendant in accordance with the terms of the Policy.

12. On or about September 17, 2008, Defendant's Claims Representative, advised Plaintiffs that the damage to their home was due to settlement and was not a covered peril under the Policy.

13. Plaintiffs then conducted their own independent investigation, including consultation with licensed geologists, which revealed that the investigation conducted by Defendant was completely insufficient to support its denial of coverage.

14. Plaintiffs have complied fully with all of the provisions of the Policy, but Defendant has declined or refused to make payment to Plaintiffs for the loss and damage sustained.

15. Plaintiffs have been required to retain the services of the undersigned counsel and are obligated to pay them a reasonable fee for their services.

16. All conditions precedent to the maintenance of this action have occurred, have been performed or have been waived.

COUNT I - BREACH OF CONTRACT

17. Plaintiffs adopt, reallege and incorporate by reference the allegations contained in paragraphs 1 through 16 above as though fully set forth herein.

18. Defendant has breached the Policy by failing and refusing to pay all benefits due thereunder for the claim of sinkhole activity made on August 8, 2008.

19. Defendant owes Plaintiffs prejudgment interest, expert fees, costs, the costs of all structurally necessary repairs, and, if the home is not repairable within applicable coverage limits, an amount equal to such limits for the total constructive loss.

20. Defendant's failure and refusal to pay is not in good faith, and such failure to pay has inflicted expense, loss, and injury upon Plaintiffs. Accordingly, Plaintiffs are entitled to recover, in addition to the amount of the insured loss and interest thereon, an amount equal to twenty-five percent (25%) of the liability for the loss, pursuant to Tenn. Code Ann. § 56-7-105.

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment against Defendant for (i) all general and special damages, including but not limited to the full cost of repair or replacement; (ii) pre-judgment interest; (iii) costs, including expert fees; (iv) an

additional amount equal to twenty-five percent (25%) of the face amount of the Policy; and (v) any other relief as the Court deems just and appropriate.

COUNT II - VIOLATIONS OF CONSUMER PROTECTION ACT

21. Plaintiffs adopt, reallege and incorporates by reference the allegations contained in paragraphs 1 through 20 above as though fully set forth herein.

22. Defendant has violated the Tennessee Consumer Protection Act of 1977, §§ 47-18-101, *et seq.*, by engaging in various unfair, misleading or deceptive acts or practices, including, but not limited to:

- (A) attempting to deceive or misrepresenting or failing to act fairly by not paying Plaintiffs for damages, when Defendant represented in its policy it would provide coverage for covered perils, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and (b)(27);
- (B) failing to disclose to Plaintiffs that sinkhole collapse is a covered peril under Plaintiffs' policy, when sinkhole collapse is a covered peril under Plaintiffs' policy, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (C) attempting to deceive or misrepresenting that sinkhole activity is not a covered peril under Plaintiffs' Policy, when sinkhole activity is a covered peril, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (D) failing to comply with Tenn. Code Ann. §§ 56-7-130 when Defendant had an obligation to comply with Tenn. Code Ann. §§ 56-7-130 in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);

WHEREFORE, Plaintiffs respectfully request the Court enter judgment against Defendant for: (i) actual damages; (ii) costs; (iii) reasonable attorneys' fees; (iv) treble damages; and (v) any other such relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury of twelve (12) persons to try all issues so triable in this action,

Date this 9th day of September, 2009.

Respectfully submitted,



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THE UNDERSIGNED, CLERK AND MASTER OF THE
SAID COUNTY AND STATE HEREBY CERTIFIES THAT
THE FOREGOING IS A CORRECT COPY OF THIS
INSTRUMENT FILED IN THE FOREGOING CAUSE IN THE
CHANCERY COURT OF MURFREESBORO, TENNESSEE

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THIS 10 DAY OF Sept 09
JOHN A. BRATCHER, CLERK AND MASTER



CORPORATION SERVICE COMPANY

Notice of Service of Process

SLM / ALL
Transmittal Number: 7024546
Date Processed: 09/30/2009

Primary Contact: Pamela Hoff
The Travelers Companies, Inc.
385 Washington Street, MC 515A
Saint Paul, MN 55102

Entity: The Travelers Indemnity Company of America
Entity ID Number 2317360

Entity Served: Travelers Indemnity Company of America

Title of Action: Brian D. Wilcox vs. The Travelers Indemnity Company of America

Document(s) Type: Summons/Complaint

Nature of Action: Contract

Court: Circuit Court for Rutherford County at Murfreesboro, Tennessee

Case Number: 09-1320GV

Jurisdiction Served: Tennessee

Date Served on CSC: 09/30/2009

Answer or Appearance Due: 30 Days

Originally Served On: Dept of Ins-TN on 09/21/2009

How Served: Certified Mail

Sender Information: Joshua E. Burnett
516-896-8000

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